

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

04-OLR-03

David C. Bangert
Attorney at Law

In September, 1997, a man hired Atty. David C. Bangert, 55, Milwaukee, to represent him in a personal injury case arising from a motor vehicle accident. The client and Atty. Bangert signed a contingent fee agreement. In 2000, Atty. Bangert filed a lawsuit on the client's behalf in Kenosha County Circuit Court.

The client had been separated from his wife since August, 1997, or a month before the accident. The wife had filed for divorce on two occasions in 1997, but she had dismissed both cases due to financial hardship. The couple continues to be married but living apart.

While the client's personal injury case was pending, the client gave Atty. Bangert permission to talk with the client's wife about the status of the case. At the wife's request, in May, 2000, Atty. Bangert wrote a "To Whom It May Concern" letter on her behalf that she could provide to creditors to inform them of the status of her husband's personal injury case.

The client and his wife agreed that he owed her the sum of \$35,000 as a result of loans that she had made to him in the past. While the personal injury case was pending, the wife requested a guarantee that the client would pay her the \$35,000 that he owed to her out of the personal injury settlement. In accordance with the client's instructions, Atty. Bangert prepared a lien in favor of the client's wife and against the client in the amount of \$35,000, to be paid from

any proceeds to be derived from a settlement or verdict in the personal injury case. The client signed the lien on April 19, 2001. The lien was also signed by Atty. Bangert. It was Atty. Bangert's understanding that the lien was for the purpose of securing for the client's wife the amount of money that she and the client believed he owed to her to resolve property division issues in their divorce proceedings.

On April 20, 2001, Atty. Bangert sent a copy of the signed lien to the client's wife with a cover letter stating, in part, "Pursuant to our discussions, enclosed please find a copy of the lien that is being filed with the court in the above referenced matter." The letter referred to the client's pending personal injury case.

Atty. Bangert told the client's wife that he would file the lien in the Kenosha County Circuit Court. Atty. Bangert, however, never filed the lien with the court. The wife states that she telephoned Atty. Bangert when she discovered that he had never filed the lien with the court, and Bangert told her that she did not need to worry about filing the lien because he would be the person distributing the settlement proceeds and that he would protect her interest.

The client's personal injury case settled on May 6, 2002 during mediation. The client agreed to a mediated settlement amount of \$75,000. During mediation, Atty. Bangert and the client calculated how the settlement proceeds would break down and included the lien to the wife in the calculations.

The net proceeds to the client remaining from the \$75,000 after payment of attorney fees, litigation costs and subrogated medical liens were \$45,764.95. The client instructed Atty. Bangert not to honor the lien to the client's wife and not to send any money to her. The client told Atty. Bangert that the client had been making payments to his wife. The client also told

Atty. Bangert that the client needed to use a substantial part of the net settlement proceeds to pay his home mortgage in order to avoid foreclosure. On June 21, 2002, Atty. Bangert distributed all of the net settlement proceeds to the man. Atty. Bangert did not honor the lien to the client's wife.

The client's wife called Atty. Bangert's office approximately two weeks after the client received the settlement and learned that her husband had received a portion of the settlement. Atty. Bangert told her that he never filed the lien and that she was not entitled to any of the settlement proceeds.

In failing to notify the client's wife when Atty. Bangert received the settlement proceeds and in disbursing the entirety of the net settlement proceeds to the client when Atty. Bangert knew that the client's wife held a lien in the amount of \$35,000 on the proceeds in the case, Atty. Bangert violated SCR 20:1.15(b), which states

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render a full accounting regarding such property.

In leading the client's wife to believe that he would file the lien with the court and that he would protect her interest at the time of disbursement of the settlement proceeds, Atty. Bangert violated SCR 20:8.4(c), which provides, in part, that it is professional misconduct for a lawyer to engage in conduct involving misrepresentation.

In accordance with SCR 22.09(3), Attorney David C. Bangert is hereby publicly reprimanded.

Dated this 29th day of March, 2004.

SUPREME COURT OF WISCONSIN

/s/ Michael Ash
Michael Ash, Referee